

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EMMETT NELSON,

Petitioner,

03-CR-6119T

05-CV-6269T

v.

ORDER

UNITED STATES OF AMERICA,

Respondent.

On November 17, 2005, this Court issued a Decision denying petitioner's writ of habeas corpus because the Court found petitioner's grounds for relief to be without merit. On December 20, 2005, petitioner filed a Notice of Appeal directly to the United States Court of Appeals for the Second Circuit. On February 7, 2006, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure and Second Circuit Rule 22a, the Second Circuit issued an Order denying the appeal, dismissing it without prejudice because petitioner failed to move for a certificate of appealability in the district court. Petitioner now seeks an Order from the district court granting a certificate of appealability.

However, because the issues raised in the petition are not the type that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, this Court concludes that the petition presents no federal question of substance worthy of attention from the Court of Appeals and,

therefore, pursuant to 28 U.S.C. § 2253 and Fed. R. App. P. 22(b), this Court denies a certificate of appealability.

ALL OF THE ABOVE IS SO ORDERED.

S/Michael A. Telesca

MICHAEL A. TELESCA

United States District Judge

Dated: Rochester, New York
March 15, 2006